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Paper No. 8

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In re Application of
Jeffrey C. Rapp
Application No. 09/877,374
Filed: June 8, 2001
Attorney Docket No. AVI-007

: **OFFICE OF PETITIONS**
: DECISION GRANTING
: PETITION

This is a decision on the request for reconsideration filed March 12, 2002, again requesting that the above-identified application be accorded a filing date of June 8, 2001, rather than the presently accorded filing date of June 10, 2001.

Petitioner again requests the earlier filing date on the basis that the application was purportedly deposited in Express Mail service on June 8, 2001. Petitioner acknowledges that the date of deposit in Express Mail shown in the Express Mail database is June 10, 2001, but argues that the application was actually deposited with the United States Postal Service (USPS) on June 8, 2001.

In the petition filed August 14, 2001, petitioner asserted that the filing date was erroneously recorded as evidenced by the Certificate of Express Mail on the Transmittal sheet filed with the original application papers. In the decision of November 16, 2001, the petition was dismissed. The Office noted that petitioner had not provided any direct evidence of the delivery of the above-identified application to the USPS on June 8, 2001. The decision further stated absent a true copy of the "Express Mail" mailing label or other evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail" service, which corroborates the allegation that the application was, in fact, deposited with the USPS on June 8, 2001, before the last scheduled pickup for that day, the application would be accorded the date indicated in the Express Mail Database as the date the application was accepted by the USPS (June 10, 2001).

On January 22, 2002, petitioner again request the application be accorded the filing date of June 8, 2001. The attorney of record provided a description of the events surrounding the deposit of the package in Express Mail on June 8, 2001. Additionally, petitioner submitted a letter from the Postmaster to establish that the package was deposited in the Express Mail Service on June 8, 2001. Unfortunately, the letter from the Postmaster failed to corroborate the allegation that the Express Mail package was deposited with the USPS on June 8, 2001. See 37 CFR 1.10(d)(3).

In the present petition, petitioner again requests the earlier filing date on the basis that the application was purportedly deposited in Express Mail service on June 8, 2001, pursuant to the requirements of 37 CFR 1.10. In support, the petition is accompanied by the Declaration of Judy C. Jarecki-Black, attorney of record, and a copy of an Express Mail log book maintained by her. In her Declaration, Ms. Jarecki-Black explained that on June 8, 2001, she deposited an Express Mail package, bearing label No. EL846227475US, in the drop box at the Olympic Street Post Office in Athens, Georgia on June 8, 2001, at 4:42 PM prior to the last scheduled pickup of 6:00 PM. Ms. Jarecki-Black further stated that after depositing the package in the Express Mail service, she entered the time, date of deposit, the Express Mail Number, the docket number, title, and inventor's name in her Express Mail log the next business day as was her customary practice.

A review of the original application papers present in the official file shows that they were received in the United States Patent and Trademark Office (Office) with Express Mail label No. EL846227475US thereon.

In view of the all of the evidence present in the file, it is concluded that the "date-in" shown on the Express Mail label is incorrect and that the correct date of deposit in Express Mail service is June 8, 2001. Accordingly, the application will be accorded a filing date of June 8, 2001.

The petition is granted.

The application is being returned to the Office of Initial Patent Examination for correction of the filing date to June 8, 2001.

Telephone inquiries specific to this matter may be directed to the undersigned at (703) 306-5589.

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